

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 SEP 21 P 2:55

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Oswego and Granby, New York)

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MM Docket No. 00-169
RM-9953

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 12, 2001

Released: September 21, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making ("Notice"), 15 FCC Rcd 17950 (2000), issued in response to a petition for rule making filed by Galaxy Communications, L.P. ("Galaxy") licensee of Station WTKV(FM), Channel 288A, Oswego, New York. Galaxy seeks the reallocation of Channel 288A from Oswego to Granby, New York, as Granby's first local aural transmission service, and the modification of Station WTKV's license to specify Granby as its community of license. Galaxy filed Comments and Reply Comments. Cram Communications, LLC ("Cram"), the former licensee of Station WVOA(FM), DeRuyter, New York, filed "Comments and Counterproposal" and Reply Comments. Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") is the current licensee of former Station WVOA(FM), which now has the call sign of WXBB(FM). For the sake of clarity, pleadings and applications filed by Cram or Clear Channel shall be referred to as documents filed by Clear Channel. On the date that comments in this proceeding were due, Clear Channel filed an application to change the transmitter site of Station WVOA at DeRuyter, New York, that is mutually exclusive with Galaxy's proposal. Therefore, that application (FCC File No. BPH-20001106ABG) must be compared with Galaxy's proposal in this proceeding to determine whether the application or the proposal should be granted.¹ In response to a Public Notice, Report No. 2491, released July 2, 2001, that requested reply comments on Clear Channel's counterproposal, Galaxy and Clear Channel filed reply comments. For the reasons stated below, we grant Galaxy's request to change its community of license to Granby. We also return Clear Channel's application to modify the facilities of Station WXBB to the Audio Services Division, Mass Media Bureau. The applicant has 30 days, from the effective date of this Report and Order to amend its application.

2. Galaxy filed its request to reallocate Channel 288A to Granby, New York, pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² In considering a reallocation

¹ See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments ("Conflicts"), 7 FCC Rcd 4917 (1992), recon. granted in part and denied in part, 8 FCC Rcd 4743 (1993).

² See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870

proposal by itself, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. In addition, in situations such as those presented in this case where a competing application must be considered, we compare the reallocation proposal with the application. These comparative determinations are based upon the FM allotment priorities set forth in Revision of FM Allotment Policies and Procedures, 90 FCC 2d 88 (1982).³

3. The Notice in this proceeding observes that Galaxy argues that the reallocation of Channel 288A from Oswego to Granby should be preferred under the Commission's allotment priorities because it would provide Granby with its first local aural transmission service (priority 3). The Notice stated that, utilizing Galaxy's originally proposed transmitter site at Granby (43-18-26 North Latitude and 76-27-23 West Longitude), the gain area would contain 134,746 people and cover 849 square kilometers, while the loss area at Oswego resulting from the reallocation of Channel 288A to Granby would have 2,230 persons and cover an area of 103 square kilometers. Further, the Notice noted that the loss area is already covered by at least five other full-time reception services and this is a well served area, as is most of the gain area, although a small section of the gain area containing 437 people and 11 square kilometers presently receives only four full-time services.

4. In its "Comments and Counterproposal," Clear Channel announced that it had filed an application for a construction permit to modify the facilities of Station WXBB, DeRuyter, New York, Channel 286B, by relocating its transmitter site and operating with equivalent maximum Class B facilities (effective radiated power of 26 kilowatts, antenna height above average terrain of 210 meters). Clear Channel also explained that its application was filed by the deadline date for comments in this rulemaking proceeding and that it is mutually exclusive with Galaxy's proposal to reallocate Channel 288A from Oswego to Granby, New York. Nevertheless, Clear Channel claimed that this mutual exclusivity would be removed if Galaxy used reference coordinates of a site about 4 kilometers distant from its original proposal, namely 43-18-26 North Latitude and 76-27-23 West Longitude. Clear Channel asserts that as a result of such a change in reference coordinates, both Clear Channel's application and Galaxy's proposal to bring a first local transmission service to Granby could be granted.

5. In its Reply Comments, Galaxy argued that its original proposal is entitled to priority over Clear Channel's application because Galaxy's proposal is a first local service under priority (3) whereas Clear Channel's application falls under priority (4) of Revision of FM Assignment Policies and Procedures, supra at note 3. Galaxy observed that its proposed gain area would be cut from 132,516 persons to about 70,000 persons and claimed that virtually all of the service gains that would result from Clear Channel's transmitter site move would occur within areas that are already considered to be well-served. Galaxy also asserted that Clear Channel's application was defective for several technical engineering reasons, including the WXBB's alleged failure to provide line of

(1990), recon. granted in part, 5 FCC Rcd 7094 (1990).

³ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

sight coverage to all of DeRuyter from its new transmitter site, in accordance with Section 73.315 of the Commission's Rules. Galaxy made the following recommendations: (1) that its proposal be preferred over Clear Channel's application; (2) in the alternative, Clear Channel should be required to amend its minor modification application to select a transmitter site that is fully spaced to Galaxy's specified reference coordinates; or (3) if the Commission determines that the public interest would be served by adopting some other resolution to the conflict between Galaxy's proposal and Clear Channel's application, Galaxy recommended changing its proposed reference coordinates to 43-17-44 North Latitude and 76-26-16 West Longitude, and changing Clear Channel reference coordinates to 42-56-03 North Latitude and 75-45-18 West Longitude. Galaxy claims that the alternative reference coordinates in (3), above, could be implemented with no site restrictions and greater public interest benefits than those that would derive from Clear Channel's proposal.

6. Comparing Clear Channel's application with Galaxy's reallocation proposal under the priorities established in Revision of FM Assignment Policies and Procedures, *supra* at note 2, Galaxy's proposal would prevail because it would provide the first local aural transmission service to Granby (priority (3)), without depriving Oswego of its sole aural transmission service. Clear Channel's application, however, would fall under priority 4, the provision of other public interest matters. We note that no white⁴ or gray⁵ areas are involved in the proposed gain areas of Galaxy or Clear Channel. In addition, we must compare the existing and proposed arrangements of allotments under Galaxy's reallocation proposal. Since Granby would receive its first local aural transmission service (priority (3)), Galaxy's proposal to serve Granby is favored over the retention of the allotment at Oswego (priority 4) since Oswego would still have a local aural transmission service. Based upon the foregoing, we believe that the public interest would be best served by granting Galaxy's proposal and reallocating Channel 288A from Oswego to Granby. Further, since Galaxy's alternate site at coordinates 43-17-44 North Latitude and 76-26-16 West Longitude is preferable to Galaxy's originally proposed site because it is less restrictive, we shall use the alternate site as the reference coordinates for the Granby allotment. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WTKV(FM) to specify operation on Channel 288A at Granby, New York.

7. As for Clear Channel's application, we return that application to the Audio Services Division, Mass Media Bureau. The applicant has 30 days, from the effective date of this Report and Order to amend its application. Although we have found that, on a comparative basis, Galaxy's rulemaking proposal should be preferred over Clear Channel's application, it is possible that Clear Channel's application can be amended in such a manner that it will not be mutually exclusive with our allotment of Channel 288A to Granby and can thus be granted. Thus, for example, Clear Channel might change its reference coordinates to 42-56-03 North Latitude and 75-45-18 West Longitude, thus removing the mutual exclusivity of its transmitter site and the site we are specifying for the Granby allotment. In this regard, the Audio Services Division can also determine whether such an amended application meets the Commission's basic engineering requirements such as providing adequate coverage of the city of license from its proposed transmitter site.

⁴ A "white" area is an area that receives no aural services.

⁵ A "gray" area is an area that receives one aural service.

8. Channel 288A can be allotted to Granby, New York, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing Galaxy's alternate site at the coordinates of 43-17-44 North Latitude and 76-26-16 West Longitude. Since the foregoing site is less restrictive than Galaxy's originally proposed site, we shall use the alternate site for the reference coordinates for the allotment of Channel 288A to Granby. We have received Canadian concurrence in this allotment.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 5, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Oswego, New York	244A
Granby, New York	288A

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Galaxy Communications, L.P. for Station WTKV(FM), Oswego, New York, IS MODIFIED to specify operation on Channel 288A at Granby, New York, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Galaxy Communications, L.P., licensee of Station WTKV(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

12. IT IS FURTHER ORDERED That the application (FCC File No. BPH-20001106ABG) filed by Clear Channel Broadcasting Licenses, Inc. IS RETURNED to the Audio

Services Division for further action.

13. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

14. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**